

**UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION**

IN RE NATIONAL PRESCRIPTION  
OPIATE LITIGATION

This document relates to:  
  
Track One Cases

**MDL No. 2804  
Case No. 17-md-2804  
Judge Dan Aaron Polster**

**PROPOSED SEVERED DEFENDANTS' RESPONSE TO  
PLAINTIFFS' MOTION TO SEVER**

Plaintiffs' goals of facilitating judicial economy and reducing expected litigation costs would be most appropriately achieved through dismissal or judgment for Proposed Severed Defendants.<sup>1</sup> Plaintiffs have acknowledged that, for any defendant to be held liable, Plaintiffs must prove that it played a "substantial rather than negligible" role in causing Plaintiffs' alleged harms. *See* ECF No. 2085 at 34 (Plaintiffs' opposition brief on proof of causation). But Plaintiffs will not be able to make that showing as to Proposed Severed Defendants. Their own expert report shows that Proposed Severed Defendants' role in opioid distribution in Cuyahoga and Summit Counties was negligible at most, *see* ECF No. 1769 Ex. V at Bates 3779 & 3849 (McCann report presenting company market share in Summit and Cuyahoga Counties), and Plaintiffs offer no expert opinions regarding any of Proposed Severed Defendants' suspicious order monitoring programs.

If the Court instead is inclined to grant Plaintiffs' Motion to Sever, these Defendants respectfully request that any severance order ensure that Proposed Severed Defendants' interests

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<sup>1</sup>"Proposed Severed Defendants" are Anda, Inc.; Discount Drug Mart, Inc.; HBC Service Company; H.D. Smith, LLC (defendant in the Cuyahoga County suit in Track One); Prescription Supply, Inc.; Rite Aid of Maryland, Inc. (mistakenly listed as "Rite Aid Corp." in Plaintiffs' Motion to Sever); and Walmart Inc. Plaintiffs have not alleged a RICO claim against any Proposed Severed Defendant. Noramco, Inc. is filing a separate response to Plaintiffs' motion.

are not prejudiced by either severance or the intervening trial. Those interests can be protected by an order that includes the following:

1. Summary judgment briefing, which is nearly complete, will be completed on the current schedule. *See* ECF No. 1813.

2. Pleadings, discovery, and expert productions remain closed. There will be no amended complaints or additional causes of action in Track One, and Plaintiffs will not be permitted to amend or supplement their Track One expert reports as to any Proposed Severed Defendant.

3. The Track One trial and trial-related rulings and proceedings can carry no preclusive effect against or otherwise prejudice Proposed Severed Defendants. Proposed Severed Defendants reserve the right to request all necessary and appropriate procedural safeguards to avoid prejudice in connection with any severance.

4. After the conclusion of the Track One trial currently set to begin on October 21, 2019, Proposed Severed Defendants will be given ample opportunity to negotiate and address any renewed pre-trial schedule and not be set for trial until after remaining motions for summary judgment involving the Proposed Severed Defendants have been decided.

Dated: August 7, 2019

Respectfully submitted,

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**Judge Dan Aaron Polster**

**PROPOSED ORDER**

AND NOW, this \_\_\_\_\_ day of \_\_\_\_\_, 2019, Plaintiffs' Motion to Sever Defendants Anda, Inc.; Discount Drug Mart, Inc.; HBC Service Company; H. D. Smith, LLC; Prescription Supply, Inc.; Rite Aid of Maryland, Inc.; and Walmart Inc. (the "Severed Defendants") is hereby GRANTED. Summary judgment briefing with respect to the Severed Defendants will continue to completion on the current schedule as previously ordered. Pleadings, discovery, and expert productions remain closed. There will be no amended complaints or additional causes of action in Track One, and Plaintiffs will not be permitted to amend or supplement their Track One expert reports as to any Severed Defendant. The Track One trial and trial-related rulings and proceedings will carry no preclusive effect against or otherwise prejudice any Severed Defendant.

It is FURTHER ORDERED that: After the conclusion of the Track One trial set to begin on October 21, 2019, the Severed Defendants will be afforded the opportunity to negotiate and address any renewed pre-trial schedule, and will not be set for trial until after all pending motions for summary judgment involving the Severed Defendants have been decided.

By the Court:

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J. Dan Aaron Polster

**CERTIFICATE OF COMPLIANCE WITH LOCAL RULE 7.1(f)**

Pursuant to Local Rule 7.1(f), I hereby certify that the foregoing brief complies with this Court's order that length limitations applicable to complex cases apply to this matter, ECF No. 232 at 4 (No. 1:17-MD-2804).

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**CERTIFICATE OF SERVICE**

I hereby certify that on August 7, 2019, this brief was filed electronically on the master docket for this matter. This Court has ordered that “[e]lectronic case filing of a document, other than an initial pleading, in the master docket shall be deemed to constitute proper service on all parties.” ECF No. 232 at 8 (No. 1:17-MD-2804).

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